IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 279.

HIGHLANDER FOLK SCHOOL,
Petitioner,

vs.

STATE OF TENNESSEE Ex Rel. A. F. SLOAN, District Attorney General, Eighteenth Judicial Circuit,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Tennessee.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

GEORGE F. McCANLESS,
Attorney General of Tennessee,
Supreme Court Building,
Nashville, Tennessee,
JACK WILSON,
Assistant Attorney General of Tennessee,
Supreme Court Building,
Nashville, Tennessee,
ALBERT F. SLOAN,
District Attorney General,
Eighteenth Judicial Circuit,
South Pittsburg, Tennessee,
Attorneys for Respondent.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

	Page
Opinion below	1
Jurisdiction	2
Questions presented	2
Statement of the case	4
I. The opinion of the state court rests upon adequate and independent nonfederal grounds	9
A. The sale of intoxicating beverages without a license is a violation of the criminal laws and constitutes a public nuisance	9
B. The operation of the school for the private gain of its president was in violation of its charter and contrary to the laws of Tennessee	12
II. The state court did not depart from applicable rules of Tennessee law	14
III. No substantial federal question is presented by the petition	18
Conclusion	20
Certificate of service	21
Appendix A—Tennessee Code Annotated	23
Appendix B—Excerpts from charter of Highlander Folk School	24
Appendix C—Tennessee Code Annotated	25
Appendix D—Tennessee Code Annotated	26
Appendix E—Excerpts from the demurrer of Highlander Public School	29

Appendix F—Order of the Circuit Court of Grundy County, Tennessee, granting temporary injunction 30

Appendix G—Excerpt from the opinion of the Circuit Court of Grundy County, Tennessee 33

Cases Cited.

Ashwander v. Tennessee Valley Authority, 297 U. S. 288 19

Chicago T. & T. Co. v. Forty-One Thirty-Six W. Bldg. Corp., 302 U. S. 125..... 19

Dixon v. Duffy, 344 U. S. 143, 146..... 20

Gillespie v. Branham, 337 S. W. 2d 689..... 12

Hermitage Club v. Shelton, 104 Tenn. 101.....11, 14, 15
Hopkins Fed. S. & L. Asso. v. Cleary, 296 U. S. 315.. 19

Johnson v. Smith, 36 Tenn. App. 441..... 10

Moriarty v. State, 122 Tenn. 440..... .11, 15

Poe v. Ullman, 81 S. Ct. 1752, 6 L. Ed. 2d 989..... 19
Poston v. State, 36 Tenn. App. 413..... 10

Radio Station WOW v. Johnson, 326 U. S. 120, 129.. 19
Rice v. Sioux City Cemetery, 349 U. S. 70..... 20
Richardson v. Young, 122 Tenn. 471, 524..... . 19

State Bd. of A. & Ex's. v. Blalock, 190 Tenn. 626, 631 19
State ex rel. Henderson v. Cunniff, 30 Tenn. App. 347.. 10
State ex rel. v. Credit Men's Assn., 163 Tenn. 450. .. 17
State ex rel. v. Junior College, 166 Tenn. 535.....16, 17
State ex rel. v. Mountain City Club, 136 Tenn. 102..11, 15
State ex rel. v. National Optical Stores Co., 189 Tenn. 433 ..... 16, 17
State ex rel. v. Southern Pub. Assn., 169 Tenn. 257.. 17
State v. Reichman, 135 Tenn. 685, 710 to 713..... 10

Tennessee Club of Memphis v. Dwyer, 79 Tenn. 452 .11, 14

Tisdale v. Tisdale, 34 Tenn. 596, 608 12

Watts v. State of Indiana, 338 U. S. 49 ..... 9, 19
Wolfe v. State of North Carolina, 364 U. S. 177 ..... 9, 19

Statutes Cited.

Tennessee Code Annotated:
Section 23-301 ..... 6, 8, 10
Sections 23-301 to 23-312 ..... 5, 17
Section 23-313 ..... 16, 17
Sections 23-2801 to 23-2821 ..... 5, 17
Section 23-2802 13
Section 23-2813 16
Section 23-2815 7
Section 23-2817 16
Section 48-1109 ..... 4, 12
Section 48-1110 4
Section 49-3701 6
Section 57-204 9
Section 57-221 10

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 279.

HIGHLANDER FOLK SCHOOL,
Petitioner,

vs.

STATE OF TENNESSEE Ex Rel. A. F. SLOAN, District Attorney General, Eighteenth Judicial Circuit,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Tennessee.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

The respondent, State of Tennessee, for its statement in opposition to the petition for certiorari, respectfully shows the following:

OPINION BELOW.

This suit was commenced in the Circuit Court of Grundy County, Tennessee, to forfeit the charter of Highlander Folk School because of its activities in violation of its

charter and the criminal laws of the State of Tennessee. The Supreme Court of Tennessee, following precedents of long standing, affirmed the judgment of the trial court forfeiting the charter on the ground that the corporation had violated the criminal laws of Tennessee in selling intoxicating beverages without a license, and on the ground that the corporation, contrary to the provisions of its charter and in violation of the statutes under which it was organized, was being operated for the private gain of its president.

The Supreme Court of Tennessee, following its own precedents and the universally accepted rule, unanimously held that it was unnecessary for a determination of the issues to adjudicate the question of the constitutionality of the Tennessee statute prohibiting integration in *private* schools.

The opinion of the Supreme Court of Tennessee is reported at 345 S. W. 2d 667.

JURISDICTION.

The respondent, State of Tennessee, urges that this Court is without jurisdiction for the reason that the decision of the Supreme Court of Tennessee is based on adequate nonfederal grounds and is supported by sound precedents of long standing.

QUESTIONS PRESENTED.

1. Where the criminal laws of a state prohibit the sale of intoxicating beverages without a license and specifically declare such offense to be a public nuisance, and the highest court of the state finds that the record is replete with testimony of the unlawful sale of beer and whiskey by a general welfare corporation engaged in educational activities, and further finds that such sale constitutes a public

nuisance, is the forfeiture of the charter of such corporation based on adequate nonfederal grounds?

2. Where a general welfare corporation is organized under a state law which prohibits the operation of such corporation for private and individual profit, and where the corporation's charter likewise contains such prohibition and further provides that any violations of the charter shall subject the corporation to dissolution at the instance of the state, and the highest court of the state finds that the president of such corporation has joined in a deed conveying to himself valuable real property belonging to such corporation, and that for a quarter of a century the expenses of taking care of the president, his family, and his household servants have been paid from the corporation's funds, is the forfeiture of the charter of such corporation based on adequate nonfederal grounds?

3. Where the highest court of a state has long held that only bona fide *social clubs* are exempt from the statutory prohibition against the sale of intoxicating beverages without a license, and then only if such sales are made solely to, or for the benefit of, its own members, and where the court has repeatedly warned that no other type of organization is exempt, is the refusal of the court to afford the exemption to a corporation organized *for educational purposes*, which sells such beverages to teachers and students, including minors, a departure from state law and the court's own precedents?

4. Where the statutes of a state, as construed by the state's highest court, provide that when a state court finds that a corporation is engaging in unlawful activities, the court may either (1) enjoin such activities or (2) forfeit the charter, depending on the facts of each case, and the precedents of the court show that in the past the charter of a corporation has been revoked because of the violation of a state law which constituted a public nuisance, is a

decision of the court forfeiting the charter of a private, racially integrated educational institution because of the violation of a state law prohibiting the sale of intoxicating beverages without a license, which violation constitutes a public nuisance, a departure from state precedent and does it deny to petitioner due process of law and equal protection of the laws under the Fourteenth Amendment?

STATEMENT OF THE CASE.

On October 20, 1934, the State of Tennessee granted a general welfare charter to Highlander Folk School for the following purposes:

> "The particular purposes for which this charter is sought are the support of Highlander Folk School, adult workers education, the training of rural industrial leaders, and general academic education."

Sections 48-1109 and 48-1110, Tennessee Code Annotated, which authorize the creation of such corporations specifically prohibit any type of trading operation or individual profit. Appendix A. The provisions of the charter likewise forbid trading operations or individual profit. Appendix B.

The charter also provides as follows:

> "A violation of any of the provisions shall subject the corporation to dissolution at the instance of the State."

On August 12, 1959 the District Attorney General filed a complaint against Highlander Folk School in the Circuit Court of Grundy County.

The original complaint contained no averment whatever relating to the mixing of the races or the operation of the school as an integrated institution.

The bill was dual in nature in that it sought two different types of relief under two different chapters of the Tennessee Code. First, it sought to enjoin the further operation of the school as a public nuisance, under the provisions of Sections 23-301 to 23-312 of the Code, Appendix C, because of the sale of intoxicating beverages without a license. Second, it sought a forfeiture of the school's charter, under the quo warranto statutes, Sections 23-2801 to 23-2821 of the Code, Appendix D, because the corporation was being operated for the financial benefit of Myles Horton, its president.

As to the first ground, the bill alleged that Horton, the president, and his subordinates were storing and selling intoxicating beverages on the premises, that persons from many states gathered together at the school for the purpose of consuming beer, whiskey, rum, and other intoxicants, in violation of the laws of the State of Tennessee, and that the maintenance and operation of the property constituted a public nuisance and should be abated. The complaint, as to the second ground, averred that Horton, as an officer of the corporation, had joined in a deed attempting to convey to himself valuable real property belonging to the corporation.

The bill prayed for three types of relief. As to the first ground, the public nuisance, the State asked (1) for a temporary injunction restraining the continuance of the nuisance and (2) that at the hearing the premises be declared a nuisance and abated and that a perpetual injunction be granted. As to the second ground, the operation of the corporation for the private gain of its president, the State asked (3) that the charter be forfeited.

There were two hearings, one of which was before a jury and the other before the Circuit Judge sitting without a jury.

The first hearing was held on the application for the temporary injunction, on September 14, 15 and 16, 1959, approximately one month after the complaint was filed. No jury was involved. The trial was before the Circuit Judge sitting without a jury. The trial judge found that the corporation had been conducting, "maintaining or engaging" in the sale of beer and that a temporary injunction should issue. The injunction was based on the provisions of Section 23-301, Tennessee Code Annotated, which declares that the unlawful sale of intoxicating liquors shall be a public nuisance. Appendix F.

Up to this point in the proceedings, the State had made no allegations in the pleadings relative to the integration issue.

On October 27, 1959, more than a month after the Circuit Judge had issued a temporary injunction restraining the unlawful sale of intoxicating beverages at the school, as a public nuisance, the District Attorney General amended the original bill so as to make more specific the initial averments and, in that amendment, for the first time, averred that the school, a private school, had violated the provisions of Section 49-3701, Tennessee Code Annotated, by operating on an integrated basis.

The case was tried on the merits in the Circuit Court on November 3, 4, 5, and 6, 1959.

In responding to the complaint filed against it, Highlander Folk School had filed a demurrer coupled with an answer. In its demurrer, the school had urged that under the rules of Tennessee procedure the State could not seek to abate a nuisance, with the resulting injunctive relief, and forfeit a corporate charter in the same suit. Appendix E.

Therefore, since Highlander Folk School had raised the procedural question, the State, when the hearing opened

in November, amended its bill so as to delete any and all prayers for injunctive relief, of any type whatever. Appendix G.

Thus, the case stood for trial in the Circuit Court, as it was to be heard before the State Supreme Court later, on the ultimate question of whether the school's charter should be forfeited.

The issue as to the sale of beer in violation of the state statute had been determined at the September hearing. The issue as to integration was admitted. Therefore, the sole issue submitted to the jury was whether the school had been operated for the personal profit of Myles Horton, its president. This issue was submitted to the jury under the provisions of Section 23-2815, Tennessee Code Annotated, Appendix D. The jury answered the question in the affirmative.

On the state of the pleadings, the only alternatives open to the trial judge were either to dismiss the action or to order the charter forfeited. All prayers for injunctive relief had been eliminated. The trial judge, therefore, entered an order forfeiting the charter.

On appeal the Supreme Court of Tennessee found as a fact that the record was replete with testimony of the unlawful sale of beer and whiskey at the school. Large quantities of beer were possessed and promiscuously sold to the students, many of whom were minors, as well as to the teachers. All of such sales were made without a license and in violation of the criminal laws of Tennessee.

Large stacks of beer cans and whiskey jugs and bottles were found at the school. Many of the exhibits in the record showed that revolting and inexcusable conduct was engaged in at the institution.

The State Supreme Court held that the mentioned activities constituted a public nuisance under the provisions of Section 23-301, Tennessee Code Annotated.

The Supreme Court of Tennessee further found as a fact that Highlander Folk School had unlawfully conveyed to Myles Horton, its president, some seventy acres of land with valuable improvements thereon. Horton had reared a family on the school's property, and all of the expenses of himself, his family, and his household servants were paid out of the school's funds for a period of twenty-five years.

Although the school had a treasurer, the treasurer did not write the checks or handle the money or any of the finances of the school. Horton himself wrote all the checks, or designated someone to do so in his absence, and handled all the fiscal affairs of the institution.

There was no evidence that the governing officers of the school ever at any time protested any of Horton's illegal acts in the operation of the institution.

The State Supreme Court held that the school had been operated for the personal gain of Myles Horton contrary to the provisions of its charter, and that such unlawful operation was perversive of the objects for which the institution was created and was injurious to the public.

The Supreme Court of Tennessee, therefore, held that the charter should be forfeited on the grounds (1) that intoxicating beverages had been sold at the school without a license and in violation of the criminal laws of the state, which constituted a public nuisance, and (2) that the school had been operated for the private gain of Myles Horton, the president, contrary to the laws of Tennessee.

I.

The Opinion of the State Court Rests Upon Adequate and Independent Nonfederal Grounds.

The Supreme Court of Tennessee based its action on the grounds (1) that intoxicating beverages had been sold at the school without a license in violation of the criminal laws of the state, which constituted a public nuisance, and (2) that the school had been operated for the private gain of Myles Horton, the president, contrary to the laws of Tennessee.

The issues of fact were for the conclusive determination by the state court and are not open for reconsideration by this Court. *Watts v. State of Indiana*, 338 U. S. 49; *Watts v. State of North Carolina*, 364 U. S. 177.

A. The Sale of Intoxicating Beverages Without a License Is a Violation of the Criminal Laws and Constitutes a Public Nuisance.

The Supreme Court of Tennessee made the following findings of fact:

> "It is also in evidence that large stacks of beer cans, whiskey jugs and bottles were found about the school." 345 S. W. 2d 668.
>
> "At many of their entertainments beer was sold without a license, and in many cases to minors." 345 S. W. 2d 668.
>
> "The record is replete with testimony of the unlawful sale of beer and whiskey at this school." 345 S. W. 2d 670.

The prohibition against the sale of beer without a permit is clear. Section 57-204, Tennessee Code Annotated, provides as follows:

"Permit from county and/or city required.—It shall be unlawful for any person to sell, distribute and manufacture the beverages prescribed herein without first having made application to and obtained a permit from the county and/or city where such business is to be conducted under the authority herein delegated to said counties and cities."

The law forbidding the sale of beer to minors is particularly stringent. Section 57-221, Tennessee Code Annotated, provides as follows:

"No person engaging in the business regulated hereunder shall make or permit to be made any sales to minors. . . ."

"It shall be unlawful for the management of any place where any beverage licensed hereunder is sold to allow any minor to loiter about such place of business, and the burden of ascertaining the age of minor customers shall be upon the owner or operator of such place of business."

Under the provisions of Section 23-301, Tennessee Code Annotated, the unlawful sale of intoxicating beverages is declared to be a public nuisance. Appendix C.

The Supreme Court of Tennessee has held that engaging in the unlawful sale of intoxicating beverages is of that class of nuisances to be treated by the Court as tending to disturb the peace and good order of the community. *State v. Reichman*, 135 Tenn. 685, 710 to 713.

The appellate courts of Tennessee have repeatedly affirmed the judgments of trial courts enjoining such public nuisances. *Poston v. State*, 36 Tenn. App. 413; *Johnson v. Smith*, 36 Tenn. App. 441. Permitting minors to congregate where beer is sold is held to constitute a public nuisance. *State ex rel. Henderson v. Cuniff*, 30 Tenn. App. 347.

The petitioner's contention that it was exempt from the provisions of the law is without basis. The assertion that the rule applicable to *social clubs* should have been applied to it is without foundation in either law or fact.

The Supreme Court of Tennessee has held that the only instance in which intoxicating beverages may be sold without a license is by a bona fide social club. *Tennessee Club of Memphis v. Dwyer*, 79 Tenn. 452; *Moriarty v. State*, 122 Tenn. 440; *State ex rel. v. Mountain City Club*, 136 Tenn. 102.

The State Supreme Court has repeatedly warned that the club must be a valid social club. *Moriarty v. State*, 122 Tenn. 440, 453 to 454; *State ex rel. v. Mountain City Club*, 136 Tenn. 102, 116 to 117. And it has held that even if the club is a bona fide social club, the exemption will not be applicable if other specified conditions are not met. *Hermitage Club v. Shelton*, 104 Tenn. 101.

The purposes for which the petitioner was incorporated are:

> ". . . the support of the Highlander Folk School, adult workers education, the training of industrial leaders, and general academic education."

Does the petitioner contend that it is a social club or that it is an educational institution? If it claims that it is a social club, then it admits that it has abused the privileges granted by its charter. If it concedes that it is an educational institution, then it is not entitled to claim the exemption afforded to social clubs.

Under the laws of Tennessee the sale of intoxicating beverages by the petitioner clearly constituted a public nuisance.

B. **The Operation of the School for the Private Gain of Its President Was in Violation of Its Charter and Contrary to the Laws of Tennessee.**

On the issue of the school being operated for the private gain of its president, the Supreme Court of Tennessee made the following findings of fact:

> "As to the first question this court is satisfied with the verdict of the jury. The preponderance of the proof is to the effect that Myles Horton was conveyed some 70 acres of land with valuable improvements upon it by the defendant, Highlander Folk School. That he handled all the money in the school, that although Miss May Justus was the secretary and treasurer of the school, she did not write checks, or handle the money, or any of the finances of the school. The President, Myles Horton handled the finances of the defendant. He wrote all the checks or designated some one when he was away to write the checks. He reared a family on defendant's property and all the expenses of taking care of himself and family and household servants, through some 25 years were paid out of defendant's funds."
>
> . . . . . .
>
> "There isn't any proof that the governing officers of defendant, school, have ever protested any of the acts of Horton in this illegal operation of the school." 345 S. W. 2d 669.

Section 48-1109, Tennessee Code Annotated, one of the sections under which the charter was issued, provides as follows:

> "The means, assets, income, or other property of the corporation shall not be employed, directly or indirectly, for any other purpose whatever than to

> accomplish the legitimate objects of its creation, and by no implication shall it engage in any kind of trading operation, nor hold any more real estate than is necessary for its legitimate purposes."

The charter issued to the petitioner provides as follows:

> "The general welfare of society, not individual profit, is the object for which the charter is granted, and the members are not stockholders in the legal sense of the term and no dividends or, profits, shall be divided among them. . . ."

Section 23-2802, Tennessee Code Annotated, one of the sections under which the charter was revoked, provides in part as follows:

> "The action also lies to bring directors . . . and officers of a corporation . . . to an account for the management and disposition of property intrusted to their care: . . . to prevent malversation, peculation, and waste. . . ." Appendix D.

As president of the corporation, Myles Horton could not lawfully convey corporate property to himself or use the corporation for personal gain.

In joining with the treasurer of the corporation in conveying a valuable parcel of real estate to himself, Horton violated a basic principle applicable to fiduciaries and his act was in clear violation of the holdings of the courts of Tennessee. *Tisdale v. Tisdale*, 34 Tenn. 596, 608; *Gillespie v. Branham*, 337 S. W. 2d 689.

Horton, in using the petitioners' property and assets for taking care of himself, his family, and his household servants for a quarter of a century, used the corporation for private gain contrary to the statutes and in plain violation of the corporation's charter.

The State Supreme Court was correct in finding that the operation of the school for the personal gain of its president "was a misuse and abuse of its powers, and perversive of the objects for which it was created and injurious to the public."

Thus, it is clear (1) that the corporation's acts in selling intoxicating beverages were not only unlawful but constituted a public nuisance and (2) that the operation of the institution for the personal gain of its president was in violation of its charter and contrary to the statutes of Tennessee.

II.

The State Court Did Not Depart From Applicable Rules of Tennessee Law.

In asserting that the State Supreme Court departed from applicable rules of Tennessee law and its own precedents, the petitioner relies upon two points. First, that the sale of intoxicating beverages at the school without a license was lawful under prior decisions of the Court. Second, that the unlawful activities should have been enjoined and that the charter should not have been forfeited.

Neither of these contentions is sound.

The petitioner, an educational institution, was not entitled to sell intoxicating beverages without a license under the decisions of the Supreme Court of Tennessee.

For more than seventy-five years the Court has consistently held that only social and fraternal clubs may lawfully sell intoxicating beverages without a license. The only cases in Tennessee on the subject involve social and fraternal organizations. *Tennessee Club of Memphis v. Dwyer*, 79 Tenn. 452; *Hermitage Club v. Shelton*, 104 Tenn.

101; *Moriarty v. State*, 122 Tenn. 440; *State ex rel. v. Mountain City Club*, 136 Tenn. 102.

The Court has repeatedly warned that the club must be a bona fide social club, and that the Court would "scrutinize closely" in order to determine whether the organization was in fact a valid social club. *Moriarty v. State*, 122 Tenn. 440, 453 to 454; *State ex rel. v. Mountain City Club*, 136 Tenn. 102, 116 to 117.

In determining whether the particular club met the requirements, the Court has looked to see (1) whether it was organized for social and benevolent purposes; (2) whether an initiation fee was required and whether regular dues were paid; (3) whether the intoxicating beverages were kept and sold to members only; and (4) whether a profit was made on the sales and, if so, in what manner the profit was used by the club.

The Court has applied the tests in such a strict manner that in *Hermitage Club v. Shelton*, 104 Tenn. 101, the Court refused to allow the exemption even to a bona fide social club, which made sales only to its members, simply because the profits from sales went into the corporation's general fund and were used for the general operating expenses of the club.

In the present case the petitioner does not claim to be a social club, bona fide or otherwise. Indeed, it could not possibly support such a claim. The corporation was organized for:

> ". . . the support of the Highlander Folk School, adult workers education, the training of industrial leaders, and general academic education."

The contention that the Supreme Court of Tennessee departed from its own precedents in declining to afford

the exemption to the petitioner, an educational institution, is without any legal basis whatever.

It is also clear that the State Supreme Court did not depart from applicable rules of state law in forfeiting the petitioner's charter.

Contrary to the petitioner's assertion, this is not the first case in the history of Tennessee in which the charter of a corporation has been revoked. In *State ex rel. v. National Optical Stores Co.*, 189 Tenn. 433, the charter was revoked. The reason for the revocation was the violation of a state law. The violation of the state law in that case constituted a public nuisance because it involved the unlawful practice of a profession, although the State Supreme Court did not specifically so hold. Section 23-313, Tennessee Code Annotated, Appendix C.

In the present case, the Supreme Court of Tennessee followed the well established rules of state law.

Under the provisions of Sections 23-2813 and 23-2817, Tennessee Code Annotated, the wrongful acts may be enjoined or the charter may be forfeited. Appendix D. The relief granted is determined by the facts of each case.

The rule followed in Tennessee is set out in *State ex rel. v. Junior College*, 166 Tenn. 535, as follows:

> "From the foregoing it seems plain that the court can, in a suit like this, exclude a corporation from pursuing a certain endeavor, or the court can exclude such corporation altogether from pursuing any endeavor and decree a dissolution. *The relief granted is to be determined by the facts of the case*" (Emphasis supplied) 166 Tenn. 541, 542.

Prior decisions show without doubt that the Court has consistently followed the above rule. For instance, in both

State ex rel. v. Credit Men's Assn., 163 Tenn. 450, and *State ex rel. v. National Optical Stores Co.*, 189 Tenn. 433, the State prayed (1) for an injunction and (2) a forfeiture. In the first case only an injunction was granted; in the second case the charter was revoked. In the first case the Court found that "there was room for an honest difference of opinion as to the legality" of the corporation's methods, and granted an injunction only, refusing to forfeit the charter. In the second case, the Court found the facts were such that the charter should be revoked. Although the Court did not so state, the offense constituted a public nuisance under the provisions of Section 23-313, Tennessee Code Annotated, Appendix C.

The petitioner's insistence that the Court should have enjoined its unlawful activities instead of forfeiting its charter is without merit. At the time the case reached the State Supreme Court on appeal, all prayers for injunctions of any type had been deleted from the pleadings. The deletion of such prayers was brought about by the petitioner's insistence in its demurrer that the State could not maintain in the same suit (1) an action seeking an injunction to abate a public nuisance under the provisions of Sections 23-301 to 23-312, Tennessee Code Annotated, and (2) a quo warranto action under the provisions of Sections 23-2801 to 23-2821, Tennessee Code Annotated. Appendix E. The State had amended its complaint by eliminating all prayers for injunctive relief in order to meet the objections raised by the petitioner's demurrer. Appendix G. Thus, the State Supreme Court had before it a complaint seeking only a forfeiture.

In *State ex rel. v. Junior College*, 166 Tenn. 535, and *State ex rel. v. Southern Pub. Assn.*, 169 Tenn. 257, the only relief prayed was an injunction. In neither of those cases could the State Supreme Court have decreed a dis-

solution, because to do so would have resulted in granting relief outside the pleadings.

In none of the cases cited by the petitioner could the Tennessee courts have found on the facts that the corporation's violation of the Tennessee law constituted a public nuisance as in the instant case.

In the present case not only was there a public nuisance but the Court found that the corporation was being operated for the private gain of its president, contrary to the charter, and that the charter specifically provided that:

> "Any violation of the provisions shall subject the corporation *to dissolution* at the instance of the state" (Emphasis supplied).

If the forfeiture of the charter was authorized by the statutes, precedents of the Court, and the provisions of the charter itself, the Supreme Court of Tennessee, in its decision, did not depart from applicable rules of state law.

III.

No Substantial Federal Question Is Presented by the Petition.

The petition is based on the premise, which is completely false, that the Supreme Court of Tennessee, in its decision, so far departed from applicable rules of state law as to deny to petitioner due process of law and equal protection of the laws in violation of the Fourteenth Amendment.

The State Supreme Court not only based its opinion on adequate nonfederal grounds but, in so doing, it followed state precedents of long standing.

The dissolution of state-created corporations is a matter exclusively of state power. *Hopkins Fed. S. & L. Asso. v. Cleary*, 296 U. S. 315. In *Chicago T. & T. Co. v. Forty-One Thirty-Six W. Bldg. Corp.*, 302 U. S. 125, this Court said:

> ". . . There is nothing in the Federal Constitution which operates to restrain a state from terminating the existence of a state-created corporation, if that be authorized by the statute under which the corporation has been organized." 302 U. S. 128.

The issues of fact were for the conclusive determination by the State Court and are not open for consideration by this Court. *Watts v. State of Indiana*, 338 U. S. 49; *Wolfe v. State of North Carolina*, 364 U. S. 177.

This Court cannot consider the correctness of the nonfederal grounds upon which the Supreme Court of Tennessee rested its decision unless there was an obvious subterfuge to evade consideration of the federal issue. *Radio Station WOW v. Johnson*, 326 U. S. 120, 129. Since the State Supreme Court in nowise departed from applicable rules of state law and its own precedents, its decision was not, and could not be, a subterfuge to evade consideration of the federal question.

The Tennessee Court, in basing its decision on adequate nonfederal grounds and in declining to adjudicate the constitutional question, followed a long established practice. *Richardson v. Young*, 122 Tenn. 471, 524; *State Bd. of A. & Ex's. v. Blalock*, 190 Tenn. 626, 631. Indeed, the same rule is consistently followed by this Court. *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288; *Poe v. Ullman*, 81 S. Ct. 1752, 6 L. Ed. 2d 989.

Where the state judgment, as in the present case, is based on adequate state grounds, this Court is without

jurisdiction to pass on the question of whether the petitioner was deprived of its rights under the Constitution of the United States. *Dixon v. Duffy*, 344 U. S. 143, 146.

The writ of certiorari will not be granted as a matter of right. There must be special and important reasons for granting it. *Rice v. Sioux City Cemetery*, 349 U. S. 70. The forfeiture of a state welfare corporation charter on adequate state grounds does not involve principles of special importance to the public generally. And this is especially true where the finding of the State Supreme Court is that the corporation is being operated for the personal gain of one person, an officer of the corporation.

No substantial federal question is presented by the petition.

CONCLUSION.

The petitioner, with great zeal, urges that it does not contend it is exempt from the laws of the State of Tennessee simply because it is a racially integrated institution. And yet, as an educational institution, it complains because the Tennessee Court would not afford to it the privileges and immunities of a social club.

With great piety the petitioner asserts that it is entitled to be judged according to the same principles of Tennessee law that are applicable to other Tennessee corporations. And yet it complains because the Supreme Court of Tennessee, following its own precedents of long standing and the rule followed by this Court, based its decision on adequate state grounds and refused to decide the constitutional question.

The Supreme Court of Tennessee found as a fact that:

> ". . . the record fails to show that the school had any plan, or standard for teaching and studies and it

seems that it was operated more as a vocation work shop than as an ordinary school. The work was carried out according to the day by day, or week by week ideas of Mr. Horton."

The Fourteenth Amendment was not adopted for the purpose of protecting an individual, disguised as a corporation, from the provisions of wholesome state laws applicable to all other citizens.

The petition should be denied.

.....
GEORGE F. McCANLESS,
Attorney General of Tennessee,

.....
JACK WILSON,
Assistant Attorney General of Tennessee,

.....
ALBERT F. SLOAN,
District Attorney General for the
Eighteenth Judicial Circuit,
State of Tennessee,
Attorneys for Respondent.

Certificate of Service.

I, Jack Wilson, Assistant Attorney General of Tennessee, one of the attorneys for the respondent, State of Tennessee, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of ....., 1961, I served copies of the within brief for the respondent on Highlander Folk School, the peti-

tioner, by mailing said copies in a duly addressed envelope, postage duly prepaid to its counsel of record, namely: Cecil Branstetter and George E. Barrett, 216 Third Ave. North, Nashville, Tennessee.

.....

JACK WILSON,

Supreme Court Building,
Nashville, Tennessee,
Attorney for Respondent.

APPENDIX A.

Tennessee Code Annotated.

48-1109. **Powers Restricted to Purposes for Which Created.**—The means, assets, income, or other property of the corporation shall not be employed, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation, and by no implication shall it engage in any kind of trading operation, nor hold any more real estate than is necessary for its legitimate purposes. (Acts 1875, ch. 142, § 2; Shan., § 2527; mod. Code 1932, § 4157.)

48-1110. **Profits and Dividends Prohibited.**—The general welfare of society, not individual profit, is the object for which this charter is granted, and the members are not stockholders in the legal sense of the term, and no dividends or profits shall be divided among the members. (Acts 1875, ch. 142, § 2; Shan., § 2524; Code 1932, § 4153.)

APPENDIX B.

Excerpts From Charter of Highlander Folk School.

The particular purposes for which this charter is sought are the support of the Highlander Folk School, adult workers education, the training of rural and industrial leaders, and general academic education.

leaders, and general academic education.

The general welfare of society, not individual profit, is the object for which this charter is granted, and hence the members are not stockholders in the legal sense of the term, and no dividends or profits shall be divided among the members.

The means, assets, income, or other property of the corporation shall not be employed directly or indirectly for any other purpose whatever than to accomplish the legitimate objects of its creation, and by no implication shall it possess the power to issue notes or currency, deal in currency, notes, or coin, buy or sell products, or engage in any kind of trading operation, nor hold any more real estate than is necessary for legitimate business.

APPENDIX C.

Tennessee Code Annotated.

23-301. **Certain Public Nuisances Defined.**—The conducting, maintaining, or engaging in the sale of intoxicating liquors; the keeping, maintaining, or conducting bawdy or assignation houses; and the conducting, operating, keeping, maintaining gambling houses in violation of the laws; in any building, structure, or place, and all means, appliances, fixtures, appurtenances, materials, and supplies used for the purpose of conducting, maintaining, or carrying on such unlawful business, occupation, game, practice, or device or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others are declared to be public nuisances, and may be abated under the provisions of §§ 23-301-23-312. (Acts 1913 (2nd E. S.), ch. 2, § 1; Shan., § 5164a1; Code 1932, § 9324; Acts 1943, ch. 118, § 1; C. Supp. 1950, § 9324.)

23-313. **Unlawfully Engaging in Business or Profession.** —The carrying on, conducting, or practice of any profession, business, or occupation which is prohibited by law, unless the person so engaging in such profession, business, or occupation is in the possession of or holds a license issued by some board or other authority organized under the laws of the state, by any person not possessed of or holding the required license, is hereby declared to be a public nuisance, and the same may be abated under any procedure now provided by law for the abatement of any public nuisances, and such abatement may be accomplished by injunction. (Acts 1919, ch. 158, § 1; Shan. Supp., § 5158a1; Code 1932, § 9316.)

APPENDIX D.

Tennessee Code Annotated.

23-2801. **Grounds for Action.**—An action lies in the name of the state against the person or corporation offending, in the following cases:

(1) Whenever any person unlawfully holds or exercises any public office or franchise within this state, or any office in any corporation created by the laws of this state.

(2) Whenever any public officer has done, or suffered to be done, any act which works a forfeiture of his office.

(3) When any persons act as a corporation within this state, without being authorized by law.

(4) Or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation.

(5) Or exercise powers not conferred by law.

(6) Or fail to exercise powers conferred by law and essential to the corporate existence. (Code 1858, § 3409 (deriv. Act 1845-1846, ch. 55, § 5); Shan., § 5165; Code 1932, § 9336.)

23-2802. **Corporate Officers—Trustees.**—The action also lies to bring the directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of property intrusted to their care; to remove such officers or trustees on proof of misconduct; to prevent malversation, peculation, and waste; to set aside and restrain improper alienations of such property or funds, and to secure them for the benefit of those interested; and generally to compel faithful performance of duty. (Code

1858, § 3410 (deriv. Acts 1845-1846, ch. 55, § 8); Shan., § 5166; Code 1932, § 9337.)

23-2809. **Officers Entitled to Bring Suit.**—The suit is brought by the attorney-general for the district or county, when directed so to do by the general assembly, or by the governor and attorney-general of the state concurring. (Code 1858, § 3412 (deriv. Acts 1845-1846, ch. 55, § 5); Shan., § 5168; Code 1932, § 9339.)

23-2812. **Contents of Bill.**—The bill shall set forth briefly, and without technical forms, the grounds upon which the suit is instituted, and the suit shall be conducted as other suits in equity. (Code 1858, § 3415 (deriv. Acts 1845-1846, ch. 55, § 5); Shan., § 5171; Code 1932, § 9342.)

23-2813. **Extraordinary Process.**—The court is authorized, upon the filing of the bill, properly verified, in all proper cases, to grant attachments and injunctions, and appoint receivers to effect the ends of justice, and to make all such orders, rules, and decrees, according to the practice of a court of chancery, as may be necessary to accomplish the objects had in view. (Code 1858, § 3417 (deriv. Acts 1845-1846, ch. 55, § 8; 1851-1852, ch. 172, § 1); Shan., § 5173; Code 1932, § 9344.)

23-2814. **Answer—Evidence in Criminal Actions.**—The defendants appear and answer the bill in the usual way, and such answer shall not be read against them in any criminal prosecution brought against them, or either of them. (Code 1858, § 3418 (deriv. Acts 1845-1846, ch. 55, § 9); Shan., § 5174; Code 1932, § 9345.)

23-2815. **Issues of Fact.**—Such issues of fact as may become necessary to try by jury in the progress of the cause, shall be made up under the direction of the court, and submitted to a jury impaneled forthwith. (Code 1858, § 3416 (deriv. Acts 1845-1846, ch. 55, § 6); Shan., § 5172; Code 1932, § 9343.)

23-2816. **Judgment of Exclusion From Office or Franchise.**—When a defendant, whether a natural person or a corporation, is adjudged guilty of usurping, unlawfully holding, or exercising any office or franchise, judgment shall be rendered that such defendant be excluded from the office or franchise, and that he pay the costs. (Code 1858, § 3424; Shan., § 5180; Code 1932, § 9351.)

23-2817. **Judgment of Dissolution—Escheat of Corporate Property.**—If it be adjudged that a defendant corporation has by neglect, nonuser, abuse or surrender, forfeited its corporate rights, judgment will be rendered that the defendant be altogether excluded from such rights and be dissolved; and in the event the court shall find that the corporation, its stockholders, directors, officers or managers have intentionally impaired or depreciated its assets or property for the purpose of preventing the corporation from efficiently discharging its duty to the public, the property of the corporation shall escheat to the state unless its stockholders, directors, officers or managers, within a reasonable period fixed by the court, restore to the treasury of the corporation a sufficient amount of money or property to enable it to efficiently discharge its duty to the public; and also that the corporation, its directors, or managers, as the case may be, pay the costs. (Code 1858, § 3425; Shan., § 5181; Code 1932, § 9352; Acts 1949, ch. 207, § 1; C. Supp. 1950, § 9352.)

23-2821. **Appeal.**—Either party is entitled to take the case to the proper appellate court for the correction of errors, as in other chancery cases. (Code 1858, § 3430 (deriv. Acts 1845-1846, ch. 55, § 7); Shan., § 5186; Code 1932, § 9357.)

APPENDIX E.

Excerpts From the Demurrer of Highlander Folk School.

2. The bill as amended shows on its face that there is a misjoinder of causes of action in that there is an apparent attempt in the original bill to proceed to abate a nuisance under TCA 23-301 et seq., and at the same time to institute and maintain a quo warranto proceeding under TCA 23-2801, et seq.

3. Said bill shows on its face that it is an attempt to proceed under Sections 23-301–23-312 and 23-2801, et seq., TCA, which requires the use of two statutory procedures that are unknown to the forms of chancery, and cannot be maintained according to the practices or procedures in the chancery court of this state.

APPENDIX F.

Order of the Circuit Court of Grundy County, Tennessee, Granting Temporary Injunction.

Filed in my office Sept. 24th, 1959.

Florence Bouldin, Clerk.

In the Circuit Court of Grundy County, Tennessee, at Altamont.

State of Tennessee, ex rel.,
vs. } Rule No. 90.
Highlander Folk School, et al.

Order.

This cause came on to be further heard on this the 16th day of September, 1959, and prior days of the term, upon the petition of the relator, the demurrer combined with an answer of the respondent, upon oral testimony heard in open court, argument of counsel and the entire record in this cause, from all of which the Court finds, orders and decrees, as follows:

That this hearing is a hearing on a petition for a temporary restraining order as provided for in Section 23-301 et seq., TCA, and particularly as provided for in Section 23-305, TCA, and it appearing to the Court that the demurrer filed to the original petition is addressed primarily to the permanent relief sought in the original bill, and upon statement of counsel for the respondent and the State, the Court is pleased to and does reserve a ruling on said demurrer for the present time, with leave for respondent to rely thereon at the hearing.

It further appearing to the Court that respondent moved in open court to amend its answer by averring

that the Honorable G. W. Woodlee, Chancellor, had entered a decree in Minute Book 5, page 519, of the Chancery Court for Grundy County, Tennessee, on August 12, 1947, and that a copy of said decree be made Exhibit "D" to the answer previously filed, and the Court is pleased to grant the same, said motion is hereby granted.

The hearing on said petition and prayer for a temporary injunction having been heard on oral testimony on September 14, 15 and 16, 1959, and at the conclusion of the testimony and argument of counsel, the Court finds that the allegations in the petition with reference to the charges of immorality, fighting, quarreling, drunkenness and boisterous crowds has not been sustained by the proof, and the Court finds that the proof does not warrant an injunction on said grounds, but that the proof does warrant a temporary injunction based on the allegation in the petition and the proof that the respondent has been conducting, maintaining or engaging in the sale of beer and that an injunction should issue based thereon.

It Is Further Ordered, Adjudged and Decreed by the Court that the manner of handling beer on the premises of the respondent constitutes a nuisance under the laws of the State of Tennessee, particularly 23-301 TCA, and that said nuisance is hereby abated by the granting of a temporary injunction in this cause as provided for in 23-305 TCA, and that the respondent, Highlander Folk School, a non-profit general welfare corporation, is hereby enjoined from maintaining said nuisance, and that any person keeping, maintaining, aiding or abetting said corporation is hereby enjoined from the sale of beer on the premises of the respondent, Highlander Folk School, and that said corporation, its agents, servants, or employees, shall not from and after September 26, 1959, enter or use what is known as the main building or administration building of the respondent, Highlander Folk School, as the same was defined on the hearing of this cause, and as appears

in Exhibit "D" to the original petition in this cause, until the further order of this Court.

In order to enforce said injunction, the Sheriff of Grundy County shall on the 26th day of September, 1959, lock the doors of the said main school building and all State and County law enforcement officers shall be permitted to enter upon the said premises at reasonable times either day or night, and inspect same fully for evidence of any violation of such injunction until further order of this Court.

It Is Further Ordered, Adjudged and Decreed that the hearing on the petition for a permanent injunction and revocation of the corporate charter in this cause is set for the 3rd day of November, 1959, pursuant to Section 23-309, TCA.

To the action of the Court in granting the temporary injunction, ordering closed the main building above referred to, the relator excepts and the defendant excepts, and each pray an appeal to the next term of the Court of Appeals for the appropriate division of the State of Tennessee, which said appeal is for the present denied.

The costs of this proceeding to date are assessed to respondent, for which execution may issue if necessary.

O. K. for Entry:

A. A. Kelly & S. P. Raulston—Special Counsel,
A. F. Sloan,
Attorneys for Relator.

.....
.....
.....
.....
Attorneys for Respondent.

Chester C. Chattin,
Chester C. Chattin, Judge.

APPENDIX G.

Excerpt From the Opinion of the Circuit Court of Grundy County, Tennessee.

On that date the relator moved to amend his petition by striking from the petition all prayers for injunctive relief; which amounted to nothing more than electing to proceed under the quo warranto statute seeking a revocation of the charter. The Court granted the motion to amend and overruled defendant's demurrer.

Defendant insists that the Court erred in allowing the amendment for the reason it in effect permitted relator to voluntarily dismiss the nuisance aspect of the petition. This position is not sound for the reason the nuisance aspect had been heard in September and the defendant insisted that the findings of the Court at that time were conclusive and agreed as well as insisted that the evidence adduced upon that hearing be filed and treated as evidence upon the final hearing. The dismissal of the nuisance aspect was, of course, in favor of defendant and not to its detriment. Furthermore, the Court is of the opinion that T. C. A. 23-307 applies before any hearing has been had on a nuisance petition.

Defendant insists the Court erred in overruling its demurrer especially on the grounds of misjoinder of actions and multifariousness.

Title 21. Section 607 provides: "The uniting in one bill of several matters of equity, distinct and unconnected, against one defendant, is not multifarious".

Both the nuisance and quo warranto statutes provide that both proceedings shall be tried according to the forms of Chancery.

—The amendment allowing relator to strike from his bill all prayers for injunctive relief and electing to proceed on the quo warranto aspect of the case alone cured any objection as to misjoinder of actions.